

State and Local Taxation

University of Denver, Graduate Tax Program 2021 Class syllabus

Professor Phillip Horwitz
January 19th - April 20th, 2021
Final exam period: May 5th - May 20th

- Course Objectives
 - Obtain a broad overview of the states' systems of taxation
 - Contextualize states' individual taxation approaches within a larger theoretical framework
 - Understand the basic structure of state (and local) finance
 - Understand the basic structure of U.S. Constitutional limitations on state taxation: Equal Protection Clause, Privileges and Immunities Clause, Due Process Clause, and Interstate Commerce Clause
 - Understand the basic structure of property taxation
 - Understand the basic structure of sales taxation, including incidence of tax, the tax rate, the tax base, and common exemptions from tax
 - Understand the basic structure of personal income taxation
 - Understand the basic structure of corporate income taxation, including different approaches to the tax base, apportionment, and unitary taxation
- Textbook & Materials
 - The textbook for this course is:
State and Local Taxation: Cases and Materials by Hellerstein, Stark, Swain, and Youngman (11th Edition).
 - Additional recommended (not required) textbooks:
 - State Tax Policy: A primer, by David Brunori, published by Urban Institute Press (4th Ed.) - I will try to get the bookstore to order several copies, but it can also be purchased on Amazon.
 - State Tax Handbook, published annually by Wolters Kluwer - An excellent practice resource, I would rely on library copies or online access rather than purchasing a copy. Wherever you end up practicing should either subscribe to electronic access or purchase copies for its SALT practitioners.

- Instructor Information
 - A. Name: Phillip Horwitz
 - B. Phone: In an emergency, contact the GTP office, who should be able to get in touch with me.
 - C. Email: Phillip.Horwitz@du.edu
 - D. Office Location and hours: I will be available most weeks from 6-7 on Wednesdays. Because office hours must be held over Zoom, appointments are required. Just email me if you would like to meet and we can set up a Zoom appointment.

- COVID 19 protocols
 - Before sounding off on the protocols, I want to note that 2020 has been a tough year for almost everyone. Spring semester of 2021 promise to be little better, though there is light at the end of the tunnel! I want to acknowledge how difficult this time has been and how difficult it is expected to be. Notwithstanding the policies outlined below, I will note that both I and the GTP program intend to be as flexible as we possibly can be in addressing peoples' needs this term (and every term, really). If you need an accommodation, please reach out to me to request it. I will be as flexible as I can be.
If you're stressed, upset, or need any kind of personal help or support, please reach out to health services or directly to Dean Boynton (jboynton@law.du.edu).
 - Policies:
 - Anyone registered for the in-person class is expected to attend in-person
 - The Office of Student Affairs will grant exemptions
 - This means attendance will be taken every week
 - Everyone must wear a face covering at all times in the building (including me, while teaching)
 - Eating and drinking not permitted in class
 - Remote learning is available to those with COVID-19 related concerns - please reach out to the Office of Student Affairs

- Attendance expectations
 - The Law School requires that we enforce an attendance policy of at least 80% attendance
 - The Law School has adopted an "In-person and Synchronous Learning Policy" effective for Spring 2021 only. If you are signed up for the in-person class but cannot participate in-person or through remote synchronous access, please refer to this policy and direct any questions to Dean Boynton.
 - Unless an exception has been granted by the Office of Student Affairs, in-person students should miss no more than two out of the fourteen classes
 - Classes are recorded, however live participation and learning is the expectation (at least for synchronous students). This is the reason for the attendance requirement.

- The OWL system will be used for synchronous, remote students, and those students will be given the same opportunity, and have the same expectations, for participation
- Participation expectation
 - Every synchronous student will be assigned at least one day (and probably two) for which they will be expected to be prepared to engage with the material in a discussion format. The student will be expected to be able to discuss the facts of the cases assigned for that day, their understanding of the issues in play in the case, and their understanding of the outcome.
 - There is no expectation (or grading) of the “right” or “wrong” answer. The expectation is merely that the student be prepared to discuss the assigned material for that day.
 - Each student will have at least a week’s warning of their participation expectation day(s)
 - Each class day will have two students assigned to be prepared for that day
 - Being unprepared (and unable to recover sufficiently to offer thoughtful responses even if not totally prepared) could affect your quiz grade by up to 25% (which is itself 20% of your overall class grade - so the participation grade is up to 5% of the total grade) for synchronous students.
 - Synchronous students participating remotely must have their cameras on, and be on-camera at all times (other than breaks).
 - Asynchronous students have no participation component.
- Grading information:
 - Grading will consist of one final exam and quizzes, as well as participation for synchronous students.
 - 20% class participation/quizzes
 - I will post a weekly quiz the day after each class.
 - Students will have two weeks to take the quiz.
 - You will have two allowed instances of taking an additional week to take the quiz. Live discussion during class will also factor in to the 20% factor to the extent practical given the conditions.
 - 80% class final – open book, open notes, (no Internet) short answer and essay
- Assignments
 - Assignments will generally consist of readings from the casebook. I may occasionally assign newspaper articles or other readings, which will be posted in Canvas.
 - In addition, you may want to subscribe to a weekly publication called State Tax Notes. This is a state and local tax news aggregation publication that provides short summaries of state tax stories of interest. It is invaluable as a practitioner tool and if you’re interested in the actual practice of state and local tax, this is a resource that most of us review daily or weekly. You need only skim the headlines and read any stories that catch your interest. If there are stories of particular interest, we may

discuss them during class.

- Accommodations
 - If you have a disability/medical issue protected under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act and need to request accommodations, please visit the Disability Services Program website at www.du.edu/disability/dsp. You may also call 303.871.2372, or visit in person on the 4th floor of Ruffato Hall, 1999 E. Evans Ave. <http://www.du.edu/studentlife/disability/services/faculty-staff/index.html>

I. Introduction to State and Local Taxation – Class 1

- Structure of class
 - A. The Constitutional framework
 - B. The statutory framework
 - C. The regulatory framework
 - D. The practical framework
- Federalism - The Federal/State Sovereignty issue
 - A. The U.S. Federal system
 - B. Federal Supremacy
 - C. State Sovereignty
- The Why, What, and How of state taxation
 - A. Why do state and local governments tax
 - B. What are state and local taxes
 - C. How do state and local taxes work

II. Individual income tax – Class 2 and 3

- A. Relationship between federal income tax and state income tax
- B. Jurisdiction to tax
- C. Structure of state individual income tax
- D. Residency
- E. Part-year and nonresident taxation
- F. Individual income tax - Practice

III. Property Tax – Class 3 and 4

- A. Nature of property tax
- B. Methods of valuation
- C. The tax rate – The mill levy
- D. Enforcement of the property tax
- E. Special cases – ad valorem taxation of tangible property
- F. Problems in property tax - valuation
- G. Property tax practice

IV. Constitutional limitations on State Taxation – Class 5

- A. Introduction to jurisdiction to tax
 - 1. *Madden v. Kentucky*, 309 U.S. 83 (1940)
 - 2. *Shaffer v. Carter*, 252 U.S. 37 (1920)
 - 3. *Quill v. North Dakota*, 504 U.S. 296 (1992)

- B. Equal Protection
- C. Privileges and Immunities
- D. Due Process
- E. The Commerce Clause
- F. Problems in jurisdiction to tax
 - 1. Individual income tax - pass-throughs
 - 2. Property tax - problems in nexus
- V. Sales Tax – Part 1 -- Introduction to sales tax - Class 5 and 6
 - A. Nature of sales tax
 - B. Types of sales taxes
 - C. The sales tax base
 - D. Structure of sales tax collection
- VI. Sales Tax - Part 2 - Exemptions - Class 6
 - A. Structural exemptions
 - B. Policy directed exemptions
- VII. Sales tax - Part 3 - Tangible Personal Property - Class 7
 - A. Extent of sales tax in the modern economy
 - B. Tangible personal property vs. intangible property
 - C. Software
- VIII. Sales tax - Part 4 - Mixed transactions - Class 7 and 8
 - A. Software continued
 - B. Mixed transactions
 - C. Bundled transactions
 - D. Real property repair
- IX. Sales tax - Part 5 - Practice and problems - Class 8
 - A. Use Tax
 - B. Problems in sales tax
- X. Corporate Income tax - part 1 - Introduction - Class 9
 - A. Corporate income tax vs. individuals income tax
 - B. The problem of “residency”
 - C. General U.S. states’ approach to CIT - apportionment
 - D. U.S. taxation compared
 - E. EU taxation compared
- XI. Corporate income tax - part 2 - Apportionment - Class 10
 - A. UDITPA, 1957
 - B. Business income
 - C. Three factor apportionment
 - D. Practice under old UDITPA
 - E. Reforming UDITPA, 2015
 - F. The new sales factor
 - G. Practice under new UDITPA
- XII. Corporate income tax - part 3 - Taxing groups of related corporations - Class 11
 - A. Unitary relationships – Basis for unitary apportionment
 - B. MTC model combined reporting statute/rules

- C. Variations on a theme – state implementation(s) of combined reporting
 - D. Colorado “unitary” apportionment – a special case
 - E. Problems in combined reporting
- XIII. Corporate income tax - part 4 - bringing it all together - Corporate income tax practice - Class 11 and 12
- XIV. Nexus revisited - Modern approaches to sales tax nexus - Class 12
- A. *Quill*, *Jefferson Van Lines*, and *Goldberg v. Sweet*
 - B. *South Dakota v. Wayfair* - The states’ big win
 - C. Nexus over the transaction - *Goldberg* and *Jefferson Van Lines*
- XV. Nexus revisited - Problems of nexus in Corporate income tax - Class 12 and 13
- A. Joyce and Finnegan - Two nexus approaches within combined reporting
 - B. Income isolation in nexus “remote” corporations - 80/20 corporations
 - C. Economic nexus
- XVI. State tax administration - Class 13 and 14
- A. State and local tax audits
 - B. The assessment process
 - C. The protest process
 - D. Litigating state and local tax issues
 - 1. Tax presumptions and deference
 - 2. Statute of limitations vs. statute of repose
 - 3. Other unusual tax issues
- XVII. Bringing it all together - Class 14
- A. Other state taxes not covered
 - B. Federal regulation of state taxation - nature and limits
 - C. Class review